

**CITY OF NEWARK
DELAWARE
PLANNING COMMISSION
MEETING**

November 5, 2008

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Mary Lou McDowell
Rob Osborne
Kass Sheedy

Commissioners Absent: Angela Dressel

Staff Present: Maureen Feeney Roser, Interim Planning Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

1. THE MINUTES OF THE OCTOBER 7, 2008 PLANNING COMMISSION MEETING.

Mr. Rob Osborne: Mr. Chairman, I just wanted to bring to the attention of you and the rest of the Commission, on page #6, the last paragraph, second line, the sentence begins at the end of the first line, "The permit is three." I think that should be there.

Mr. Bowman: Are there anymore corrections or corrections to those minutes?

ON MOTION BY OSBORNE, SECONDED BY BROWN, THAT THE MINUTES OF THE OCTOBER 7, 2008 PLANNING COMMISSION BE ACCEPTED AS CORRECTED.

VOTE: 6-0
AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE, SHEEDY
NAY: NONE
ABSENT: DRESSEL

MOTION PASSED

2. REVIEW AND CONSIDERATION OF THE REZONING FROM RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) TO BLR (BUSINESS LIMITED RESIDENTIAL) AND MINOR SUBDIVISION OF THE .3513 ACRE PROPERTY AT THE SOUTHEAST CORNER OF THE INTERSECTION OF CHOATE AND NEW STREETS TO CONSTRUCT FIVE APARTMENTS (FOUR SEMI-DETACHED STYLE APARTMENTS AND ONE DETACHED STYLE).

Ms. Feeney Roser summarized her report for the Planning Commission which reads as follows:

“At its meeting of September 22, 2008 the City Council referred to the Planning Commission for your re-review and reconsideration a proposed revised development plan for the .3513 acre (or .3658 acre – there is a lot size discrepancy between the deed and the survey at this location) properties at the southeast corner of the intersection of Choate and New Streets. As you may recall, at the Commission’s public hearing concerning this matter, you reviewed a four-unit apartment townhouse development at the location and recommended that Council approve the requested rezoning from RM (multi-family dwellings – garden apartments) to BLR (business limited residential) and the accompanying minor subdivision, with the conditions that the applicant voluntarily agree to deed restrict the property to limit the total number of unrelated individuals residing in each unit to a maximum of four and the total number of motor vehicles permitted on the site limited to 16.

As you can see from the attached City Council September 22, 2008 meeting minutes, as part of Council’s consideration of the Planning Commission’s recommended approval with conditions, the applicant requested that a five dwelling unit reconfigured subdivision plan be considered by the City if occupancy limits were to be imposed as suggested by the Planning Commission. Since additional units were being discussed, and a site reconfiguration was also under consideration, Council decided to table the matter and refer it back to the Planning Commission for your new recommendation on the revised plan. As a result, the revised plan is now before you.

Please see the attached revised rezoning, minor subdivision and landscaping plans submitted by Apex Engineering, Inc., on behalf of the applicants as well as proposed building elevation drawings.

Revised Plan

As you can see from the rezoning and minor subdivision plan, the original four-unit attached row house type configuration fronting on New Street, has been revised to show two sets of semi-detached units fronting on Choate Street with a single unit remaining at the northeast corner of the site fronting on New Street. A parking area with access from New Street is shown to the rear of the two sets of semi-detached unit configuration at Choate Street and to the west side of the single detached townhouse apartment on New Street.

As a result, the four-unit configuration of 11.38 dwelling units per acre has now been increased to 14.23 dwelling units per acre. As indicated in a note on the plan, however, the applicants are now proposing that the semi-detached units on Choate Street will be limited to no more than five occupants per unit and one single unit facing New Street has been limited to four. Obviously, therefore, the units continue to be proposed as rental dwellings.

City Departmental Comments

The City’s Management, Planning and Development and Operating Departments have reviewed the revised Choate Street Commons rezoning and subdivision plan and have the comments provided below. If necessary, the plan should be further revised as indicated prior to its review by City Council.

1. Regarding comprehensive planning, the Newark Comprehensive Plan in force when the application was made (and the revised new Comprehensive Plan) for this site calls for “single family residential (medium density) uses,” in the Planning Section within which the Choate Street Commons property is located. As noted previously, the Plan defines “single family residential (medium density),” as, “areas designated for dwellings occupied by one family, either detached, semi-detached or townhouses, with overall densities of four to ten dwelling units per acre.” The revised plan calls for 14.23 dwelling units per acre.
2. The Planning and Development Department suggests that the designation in the note referring to “student occupants,” be revised to specify limiting units to no more than one family, or the designated number of occupants shown.

3. Fifteen off-street parking spots are required for this plan. The plan should be striped to indicate the provision of the fifteen spaces on the site.
4. The Electric Department indicates that:
 - The subdivision plan should be revised to show an open utility easement required on the site.
 - The developer will be required to pay all costs for the relocation of the Verizon owned pole (14E43) replaced at the corner of Choate and Center Streets in order to permit the installation of the new aerial transformer.
 - A fee of \$100 per meter for radio read meters is required.
 - The Oak trees proposed in front of units #1 and #4 and the Okane Cherry near the utility pole on New Street should be revised on the landscape plan to meet the requirements for no trees over 18 ft. high at maturity.
5. The Parks Department indicates that, in addition to the Electric Department tree substitutions noted above, that the plan needs to be revised to provide enough space for required street trees adjacent to unit #1 fronting on New Street.
6. The Building Department has raised a concern with the original lot area variance approved by the Board of Adjustment on May 15, 2008, since the plan has been revised to show two semi-detached dwellings and one single detached dwelling.
7. The Water and Wastewater Department indicates that regarding water service:
 - Units #1 and #4 may reuse the existing $\frac{3}{4}$ " water service for domestic water only.
 - Another water tap will be needed for individual fire services.
 - Regarding units #2, #3, and #5, they will require a new wet tap for each unit for fire and domestic service.
 - One water meter per unit must be installed in basement after entering foundation.
 - The cost for the meter, yoke and remote are the responsibility of the developer.
 - Fire flow tests will be required.
 - Utility connections that are not reused will need to be properly terminated at the main.
8. The Water and Wastewater Department also had the following comments concerning sewer:
 - Existing sewer laterals may be reused for units #1 and #4 if cameraed and determined adequate.
 - New sewer laterals will be needed for units #2, #3 and #5 with cleanouts placed five feet from the house.
 - An STP fee of \$666.67 per unit is due at the issuance of COs.
9. The Public Works Department indicates that the developer needs to provide the existing and proposed grading with finished floor elevations to determine that drainage will not adversely impact adjacent properties. In addition, the Department notes that water and sewer lines should be shown on the plan.
10. The Public Works Department also indicates that because there is a change in the impervious surface proposed, the site should be evaluated for stormwater quality control utilizing GTBMPs to the maximum extent practicable, including volume reduction since the site drains to the White Clay Water Shed. The developer must also evaluate stormwater quantity and may need to request a waiver. Finally, the

developer should conduct infiltration tests to evaluate if some type of infiltration trench could be provided.

11. The Police Department expressed concern regarding the addition of the fifth unit on the plan, which they believe will increase demand while further reducing parking available at the site. The Department also has concerns about the additional eight residents the revised plan will allow at the site by eliminating the four per tenant limit and adding an additional unit. The Department cites the strain the density of this revised plan will place on the parking system and police resources.

Recommendation

The Planning and Development Department suggests that **the Planning Commission consider your previous recommendation, review the comments made at the September 22, 2008 City Council meeting, the developer's comments, and additional public comments at the Commission's public hearing and make a new recommendation to City Council.**"

I know that the developer is here; he will be happy to answer your questions, as will I, if you have any questions for me.

Mr. Bowman: Are there any initial questions for Maureen from the members of the Commission?

Mr. Osborne: Maureen, could you clarify #6 on page 3. I am not familiar with the lot variance.

Ms. Feeney Roser: As you know, the applicant went to the Board of Adjustment for a lot area variance. The Building Department wondered whether revising the plan to have five units on the site would create a concern. We have reviewed, and I know the developer has reviewed, the minutes of the Board of Adjustment meeting; and while it is true that the plan that was shown had four units on it, there was no discussion of there only being four units. The variance was for lot area; it wasn't for lot coverage or the number of units on the site. So, we mentioned it in the report because we wanted you to know was that the Building Department had expressed concern about the issue. But when the rest of the departments reviewed it, we felt that that was not a problem for the revised plan.

Mr. Bowman: If there are no further questions from the members of the Planning Commission, the representative of the developer please step to the microphone, introduce yourself, and state your name and address.

[Secretary's note: Mr. Tucker, the Planning Commission and the public referred to visuals brought by the applicant for his presentation to the Planning Commission].

Mr. Shawn Tucker: Good evening, Chairman, Planning Commission members, and Ms. Feeney Roser. I am with the law firm of Wolfe Block, 1100 N. Market Street, Ste. 1001, Wilmington, DE 19801.

I represent, as some or all of you may recall, Jim Lisa and the legal entity created for the development of these parcels – Choate Street LLC.

If I could just jump into that Board of Adjustment question. What we did, and Ms. Feeney Roser correctly stated on the record, was when we were in front of Council and the issue of the fifth unit was discussed, before we got to that point, we checked the actual hearing tape (Mr. Lisa who is my client and is also an attorney in Pennsylvania listened to the tape). I also checked the minutes, and that was not a condition. I went one step further today and gave Mr. Jeff Bergstrom a call who is a member of the Board, and he had mentioned that he would call Mr. Begleiter about it. I told him I did not think that was necessary, but he concurred in his mind, that was not the issue. The issue was we had submitted the plan before a law was changed and the plan was in the process. The variance was granted because of the hardship that was created because that change in law

would have adversely affected this project. That was the focus point of the Board of Adjustment. We had submitted the four-unit plan just like we had presented to this Board over the summer because that was the project we were moving forward with until we started to have to wrestle with the cap, which I would like to talk about a little bit tonight. That is when, through our discussions with Council, engineer and architect, the five unit possibility kind of came into the spectrum. I just wanted to clear up that Board of Adjustment issue because it is important to us, too, to make sure we are not coming in front of the Board if we have some unfinished business. We took a look at that very carefully.

A quick recap and then I will drill down into the proposed changes this evening for your consideration. This project is located at the intersection of Choate and New Street. It is approximately one block off of Main Street. It is an area that is certainly within the realm of a walkable downtown Newark and a walkable University of Delaware, if you will, and is clearly part of the downtown Newark area. It is an area that generally has increased density as the downtown area of the City to encourage that walkability and to encourage people to live there, so that they are not driving into the City and clogging up the streets but literally, can walk to stores, to shop, eat and to carry out at least part of their business and sometimes even work downtown. The area that I would respectfully submit is crying out for redevelopment. One of the exhibits that we had shown at the last hearing, which is marked as Exhibit 1, gives you a flavor for the area. It is dated. Nobody has really taken a stab yet at redeveloping this particular street. The density, if you look at Choate Street and New Street in this vicinity, is about 13.7 units per acre. Our client's engineer (Jim Lober with Apex) took a look at the parcel maps and provided us with that number. I think it comes to 13.68. We rounded it off to 13.7. If you convert that into our acreage, which is approximately .3513 acres. If you go by deed it is a little bit more. There is a discrepancy. That comes to about 4.8 units for the site. We are more towards the five than the four, but I wanted you to have a sense for what the density is there today, given what we are asking for.

Ms. Feeney Roser has certainly pointed to the language of the Comprehensive Plan that references this area. The language regarding density is a guideline in range. The Comprehensive Plan makes very clear that they are not strict standards, but they are guidelines only. One of the things, I think, that is important to note is that the Comprehensive Plan specifically calls this area a rehab district. That was referenced in the original Department's report. When you look at the Comprehensive Plan, in particular page #33, the Comprehensive Plan sends you for further reference to another planning document called the Economic Enhancement Strategy. It specifically states that that document should be consulted concerning downtown redevelopment. We looked at that very carefully when we were looking at options for the site. One of the things the Economic Enhancement Strategy plan talks about is that it encourages not placing artificial limits on the density for the downtown area. That is at page #45 of the Economic Enhancement Strategy.

Some of the policy goals, I think, play into what we are proposing this evening. It talks about providing the maximum level of assistance, support and feasible incentives for redevelopment in this downtown area. That is, again, on page #45. Encourage high quality of redevelopment, which we want to talk a little bit about tonight, some different things we are doing along those lines. Encourage more market rate rental units for students and non-students. And, then, lastly, encourage also a balance of family occupancy and owner occupancy. That is at page #12 of the Economic Enhancement Strategy, and page #45.

So, we looked at those issues that are also relevant as part of, I think, the Planning Commission's analysis of this site and really balancing different policies that you may be struggling with as you look at this project, and we have struggled with. As I am sure you recall this past summer, as Ms. Feeney Roser correctly stated for the record, you had originally recommended the four-unit plan which is what we were originally moving forward. What happened is, when my client, Mr. Lisa, and his wife moved forward with that project there was no initial cap on the rental units that came out of the department. The cap was something that, certainly in your discretion, you had recommended. Had the cap been recommended by the department, we would probably have proposed a different

arrangement or some different things at that time. I will explain why. There are four parcels today on the site. The current zoning would permit four rentals per unit for essentially the same number of people that this redevelopment project would permit in terms of total rentals if it went the rental direction. Generally, for redevelopment projects to work in terms of economics – that is not necessarily a planning issue, but just so you can understand where we are coming from – there is usually some type of incentive, some increase in density, not an overwhelming increase, not a ridiculous increase but some incentive that help shore up the numbers and make the project economically sound and less risky. And, so when we were proceeding forward with four units without a cap, there comfort level was there. When the cap was put on the concerns arose. So, in discussions with members of Council, I think, they were – I can't speak for them obviously, but my sense was – sensitive to those types of issues in order to encourage redevelopment. They were also sensitive, and rightfully so, to the capping. One of the things that came up as a possible compromise or idea was a fifth unit, and then put caps so that the fifth unit would provide that additional density, provide some incentive and safety net, if you will, for the numbers on a project of this nature, provide incentive for others on the street to, hopefully, follow in suit and continue to redevelop Choate Street so that there is some additional benefit that they might obtain albeit, maybe, just one unit, but something more than what is currently there.

And I would note that this is an exempt street. This is an area that is actually listed specifically, I think, in the Code is where it is put by the Building Department or by Council, I guess it was, that doesn't have some of the special conditions that some other areas of Newark have on rental because, as it was explained to me, this is an area that was already predominantly being leased. So it was called out separately. So, it is not one of those sensitive areas, at least when that legislation went through. It is an exempt street, which I think is worth noting for the record.

I think what certain Council members were also concerned about is they want to encourage the owner occupancy aspect here. I think those folks recognize and we want to be very candid, it is the rental stream that is one of the safety mechanisms for banks to loan money and for people to invest this sort of money in a town, especially given the turn of the market, especially over the last year or so. It is that potential rental income that can make redevelopment happen here where in other places it is not happening right now. I want to be very candid about that. It is certainly something my client is interested in; however, it is also my client's interest to keep his options open and to present this in such a way that it could be sold fee simple. There is a legal mechanism that you can implement to preserve that. We have agreed to do that. There are some other things that came up like, if you break up the four units into two semi-detached, is that more akin to something that folks might want to buy or nonstudents might want to rent. If you have a separate unit stand alone that is single family detached, would that be something that somebody would be more likely to buy or more likely to rent with their family as opposed to just student rentals. So, we listened to some of the concerns that we heard from Council members about what design steps could be taken here to further encourage owner occupancy or nonstudent occupancy either now or in the future, at some point. So, what you see before you this evening was an attempt to address those concerns in a revised plan where instead of having four units in a row, we now have two semi-detached separated and then we have the stand-alone home. Doing that, creating those separations does increase development costs, obviously, because you have more surfaces, that you are using more materials, but the extra unit, of course, and the potential extra density does put more money into the equation and does increase potential value so you can borrow more.

One of the things we discussed with Council and are certainly willing to commit to are the architectural that, hopefully, you have in your package this evening where you see that the fronts are all now proposed to be in brick. The original architectural that you saw over the summer had a combination of brick and siding and so, our client has offered up, and I think it was suggested by one or two folks on Council if my research serves me correctly, that the brick was nicer or more desirable. We certainly would agree. It is a lot more costly but it is certainly more desirable, more appealing, I think, and it adds to that higher quality, I think, that your plan is calling out for. It also helps set an important precedent on the street. I think this project could be the spark that leads to

further redevelopment of this street. So, by putting that level of money and that level of detail into the facades and other architectural features, others who come in will be hard-pressed to expect to get approval with less. I think they are going to have to offer up the same or more once this is built in the right fashion. So, I think that is an important thing to consider this evening. There is a chance to create a spark here to get this street redeveloped, even given the current state of the housing market.

In terms of actual size increase from what you saw last, let me note this. The fronts on the units that were in the four pack, I believe, were 24 ft. each. These are 20 ft. It is a little bit more compressed and what you end up with here is a footprint in total that is about 700 sq. ft. larger footprint. So, it is not an entirely additional unit in terms of extra square footage. The units have been made a little bit smaller to fit in this fifth unit in terms of the site and site limitations, but overall, our engineer calculated that the total footprint has increased by about 700 sq. ft. It is about a 5% increase.

Regarding the Chief's concerns, we are certainly respectful of any concerns of law enforcement. The original comment letter from the Police Department when there was not a cap did not reference the density concerns. So, that was a little bit of a surprise to us. Regarding the parking system and the Chief's concerns over that. We are proposing four parking spots per unit. The Code requires three. So, we are exceeding that. But, in addition, what we talked about doing after we saw that comment was adding some additional parking which could be added, for example, (inaudible) that we do offer here is that all the parking can be handled on the site instead of off-street. One of the law enforcement concerns that you may recall on the original plan was they were concerned about the turn-out on Choate. Originally, the curb cut was here and the one-way direction. And, so that has been address by the relocation in this area. We solved one concern but created another, unfortunately, but we are trying to balance all those things. I would respectfully submit the extra unit, while it is an increase in density when you balance some of the benefits from the planning side and having a little bit higher density in your downtown area, it is not really inconsistent with what is there and that those planning principles could outweigh some of that other concerns.

There were concerns expressed also by the Planning Commission at our last meeting with you about adequate parking and noise in general. I think the concern was that people would park in the open areas, perhaps not in the designated parking spots, and there is the Chapel Fest concern and the rowdiness that, unfortunately, comes along with that event. What Mr. Lisa did was prepare a proposed set of restrictions that could go into the development agreement that could be handled a couple of different ways to help address those kinds of concerns. The first one would be – and these were read into the record for Council, I do have a copy with me this evening that I can hand out – a provision in all the leases where if folks did not park in the designated spots and began to park in any of those open areas, the lease, could be terminated. It wasn't mandatory, but the landlord would have the authority to terminate because if someone does it one time we don't want to terminate the lease, but if it becomes systemic, then, yes, maybe you need to do that. That same provision was added for any alcohol being consumed outside and gatherings so that the landlord would have the ability – it is right in the lease and all the tenants have to sign it – to terminate for those reasons. One provision that was mandatory was that if anyone was convicted of any disorderly conduct or any Title 11 or Title 21 offense on the property, that would be mandatory termination of the lease. There are certain rules under the Landlord Tenant Code that you have to follow. It takes a little while to get folks out. It is about 60 to 90 days, but that would be done and that would be mandatory and that would be something that this project would be restricted to so that if somebody plead guilty or was found guilty, they would be out. Mr. Lisa has several rental properties. He generally requires a higher grade point average for his tenants. I don't think there are any complaints on record for any of Mr. Lisa's properties. So, he has been, I think, a responsible property owner, and when he has rented there hasn't been any history of problems. I think that speaks a lot about his character and his commitment to keeping the City safe. With that, I would certainly be glad to answer any questions.

Mr. Bowman: Are there any questions for the developer from members of the Commission?

Mr. Begleiter: Mr. Tucker, the issue of parking off the pad could be solved with plantings. And your landscape plan does not show that. What was in your head about how that empty space would interact with the vehicles pulling in and out of those spaces all of the time?

Mr. Jim Lober: I am with Apex Engineering. I am the civil engineer on the job. The large area of green in the back behind the single unit is going to be the stormwater facility. So, there will be grading, burms, low areas and also plantings in that area that are going to prohibit people from parking there. You would not be able to get your car down the slope and once you are in there, you would not be able to get back out. The remaining green in the back is going to be stormwater landscape.

Mr. Tucker: Just for the record, would the additional parking fit in this area.

Mr. Lober: The additional parking will still fit. If this is what we have, the area will be a little larger and a little flatter. If we end up putting some additional parking in there, it will maybe be a little smaller and maybe a little deeper, but we will make it fit.

Mr. Tucker: (Inaudible).

Mr. Lober: Certainly.

Mr. Begleiter: Mr. Tucker, you talked about setting a precedent on the street.

Mr. Tucker: Yes, Sir.

Mr. Begleiter: In the context you were referring to it you were talking about the quality of construction and brick facades and so on. But, I agree with you a lot that whatever is done on this property is very likely to set a precedent for the rest of Choate Street and, perhaps, New Street as well. It would be nice if we could say that the precedent only applies to the architectural design, it doesn't actually apply to the density issue, the parking issues, or any of those other things. But, I am a little concerned about the fact that you are right. This is going to set a precedent and so I am just raising the concern about the density being a precedent as well. I don't know if you want to comment on that or not.

Mr. Tucker: I think that is a valid concern. If you peel that back from a planning standpoint, the way this site will be distinguished from others is our client does have four parcels and could hypothetically have four units on those four parcels without redeveloping. He would have to build two new units but he has two today. So, from a planning standpoint I think you can look at what other folks come in with and do they really have four parcels? If they have four parcels, they probably have fair point to make that if the City wants to encourage redevelopment, they have to give us something that makes the numbers work or at least gets at a better comfort level. If they don't have four parcels, then they are easy to change. I think you could use that as a measuring stick as to whether or not you think in your judgment it makes sense to encourage the redevelopment they are proposing or not. But, I think if you don't offer something in terms of density you are going to discourage, not encourage, redevelopment. What kind of surprised me is that despite the economy being so healthy over the past ten years in the housing market, nobody has stepped up, even when lending was easier, to redevelop this site. I do think, from talking to some folks, it was because they didn't have an incentive that was cheaper to let what was there stay, and rent that in its condition albeit, perhaps, with lower rents. But, it was cheaper to do that than to redevelop and the cost of redevelopment only to get a little bit more rent.

Mr. Begleiter: There may be something that I just missed here, but your client has four parcels, but there aren't four buildings there now, are there?

Mr. Tucker: There are two.

Mr. Begleiter: So, there would be redevelopment costs and barrowing anyway even if he wanted to reap the bonanza of revenues that would occur by being able to rent those additional units in those hypothetical four parcels.

Mr. Tucker: You would have to build two more to get to the total of four. But to completely tear down two and redevelop a site and add the brick and these other niceties and other architectural features, it is significantly more expensive than building two new homes on what we have.

Mr. Begleiter: So, the alternative really for the owner would be to build two really spectacularly looking great precedent setting units that are separated by two – to use your euphemism – dated units on the street, that doesn't seem like a very appealing prospect to either the Planning Commission or, frankly, to a developer. I don't see necessarily that it is such a big incentive. Either we want to redevelop that site or we don't. If we don't want to, then you are stuck with the two units and there you go. If you do, you are going to be spending money and barrowing money and investing anyway, and you wouldn't want to do that and have two crummy units next to two spectacularly beautiful units.

Mr. Tucker: I think that is fair with one footnote, which would be because it would not have to go through any special development. You pull a building permit and you would have to set aside the Building Code. I am not saying that is what my client would do, but it could be a plain Jane with no brick and no architectural features.

Mr. Begleiter: But, your client is not that type of person as you have told us and we know from his record. I am concerned about the density issue. I am going to sort of leave that on the table at the moment.

I wanted to ask you another question related to the proposal. It is customary, I think, although, I don't know if it is required – Maureen, you can kick in on this if I am wrong about this - but, it is customary that all the facades on the sides of buildings of proposals that are visible from public rights-of-way are supposed to have consistent construction technique and appearances. Is that correct?

Ms. Feeney Roser: We have made that a condition of approval for several developments in the last couple of years.

Mr. Begleiter: And, you haven't done that in this case. Is there a reason why? Look at the developer's drawing and on New Street you have a long deep façade that is what I would characterize as inconsistent with the façade here and the façade there.

Ms. Feeney Roser: Although it is done all over the City that the front of buildings are brick and then there is some siding around. What I think we mean by consistent is not so much that you would use the same exact material but that the buildings would be consistent amongst themselves, so you wouldn't have stucco on one side and siding on another, and that kind of difference. I don't know that we have ever required that the whole structure be all brick.

Mr. Begleiter: Facades visible from the public right-of-way is, I think, common language. That would not require the construction on all sides of the buildings. Maybe you want to comment on the issue.

Mr. Tucker: Are you are suggesting, Mr. Begleiter, is that the side facing the right-of-way also be bricked?

Mr. Begleiter: Yes.

Mr. Tucker: If you made that part of your recommendation, it is certainly something we could crunch some numbers on. It obviously does add some expense, but we could look at it.

Ms. Peggy Brown: I would like to see where the parking is and the waste water management here. It is all hypothetical.

Ms. Feeney Roser: At this point, the plan is supposed to be a general layout. Those kinds of details are done through the construction improvement plan process normally.

Mr. Lober: The driveways are designed at 18 ft. wide which is essentially the two parking spaces and then there are two car garages inside each house. What you would actually have is at the back of each unit you would have four parking spaces, two inside the building and two in the double wide driveway immediately behind. The depth of that driveway is also 18 ft. deep which is the required depth for a parking space. The four spaces are co-compliant for each unit, so you have 16 parking spaces. That is the same thing for this unit. You have a double wide driveway for two spaces and then a two-car garage inside the first floor of that home. So, that where all of your parking would be accommodated. If additional parking was requested, we could essentially add more parking places – the shaded area being the asphalt and the white area being the grass. In this area the green grassed open area, when the details come to light and we start to grade things we will see how deep they need to be, that is where the storm water will be located. You will see contouring and depressions where the water will be draining to hold and clean it.

Ms. Brown: There will be a definite dip there?

Mr. Lober: Yes, in order to let the water in.

Ms. Brown: It is not some place that people can congregate? Not cars, I am talking about bodies.

Mr. Lober: The typical design for these things is a depression at a 3 to 1 slope around the perimeter and then what DNREC prefers is a planting soil, which is a very loose mix of 1/3 peat moss, 1/3 sand and 1/3 mulch, and then you top that with mulch and plantings. Could you stand on it without sinking, sure, but would you want to stick a lawn chair out there and hang out – no.

Ms. Brown: My concern is outside congregating areas.

Mr. Lober: I think the stormwater facility function and the dense landscaping buffer that will be proposed as part of the landscaping plan will work with that.

Ms. Brown: We keep dancing around this, but we are talking about the purpose of the building and you keep saying that it might be owner occupied, but in reality what is going to happen to it?

Mr. Tucker: I tried to be clear on the record. If I wasn't let me try again. I am sorry. I am not going to sit here and say that these aren't going to be rentals. That is probably the market that will come to bear here. That is why people will redevelop or build in Newark right now and not build in other places. That doesn't mean my client would not, perhaps, prefer to rent to a young family and would certainly not turn away a young family. That would probably be a preferable tenant. Or a graduate student, probably a preferable tenant. My client certainly wants to keep the option of being able to sell these fee simple, but I am not going to stand in front of you and suggest that the rental income is something banks loan money on, and people rely upon to make these types of investments.

Ms. Brown: This goes to the idea of the number of bodies in there. These is going to be a rental property with X number of bodies, and our Police Department has stated that they are very concerned about the resources that are going to be necessary. Granted, this builder has had a good record, but the reality is.

Mr. Tucker: And, it is a very fair comment. When I look at it, it kind of stuck out to me, too, when I saw the Police Department's comments because I didn't see them the first go around without the cap. It doesn't mean they aren't valid. But, from a planning standpoint, I would try to address them this way. There is development that is going to continue to happen in Newark. Ideally, you want it to be in your downtown. You want it to be in the walkable community. This is an opportunity to do that. It is going to happen

further out from downtown which puts a greater burden, quite frankly, on law enforcement and their enforcement activities. I guess in a perfect world, if I was the Chief, I probably would want all development to stop because that would then freeze my responsibilities and duties. But, this is one of many other projects that are going to come through. We are talking about one additional unit, and I do understand and respect the Planning Commission and Council's desire to put some caps on here. I am also asking to balance that one unit with incentivizing redevelopment in the downtown area, which your Comp Plan is recommending. It is encouraging it as a matter of policy. It actually says, offer incentives. Make this happen. I believe the Newark plan is probably ten plus years and it just hasn't happened. Nobody is doing it. I am pretty certain it is because there is no incentive. I am trying to balance all of those things as a land use attorney. I am a former planning director myself so when I read these things, I balance them, too. I would respectfully submit that when you balance them, the one extra unit to get redevelopment on this street to update it, that match, if you will, outweighs the one extra unit that you may give to the property owner to incentivize them. That is just my opinion and I would ask you to consider that.

Mr. Bowman: A quick question for you. All five units are four bedroom units?

Mr. Jim Lisa: I am the developer. We have not actually designed the internal layout of the units but it is our anticipation that they should be four-bedroom units.

Mr. Bowman: Refresh my memory, Maureen, are there any restrictions on this particular street for unrelated tenants under current Code?

Ms. Feeney Roser: No, not for BLR, which is what they are proposing to rezone the property to.

Mr. Bowman: I, for one, what I see you asking for is essentially for 24 people. Is that correct? Five for each of the semi-detached, units and 4 for the stand alone unit?

Mr. Tucker: That is correct, based on the notes that we put on there. And the possibility of five per unit came up at the Council meeting. We proposed that. We understand that it might be more like four, but it came up and it was mentioned on the record and we put that in there for discussion.

Mr. Bowman: Given the fact that you have basically 20 secured parking spaces that adequately meets the Code, I, for one, don't see any reason to go beyond the limit of four per unit. One person per bedroom seems very, very reasonable to me in this type of occupancy. We all know what can occur. The next time the economy gets tough or tougher than it is now, you will have kids stacked two deep in a bed in there splitting up the rent. So, I would certainly feel that a good compromise, if the rest of the Commission agrees to go that route, would be a limit to four per unit – one person per bedroom. That would be my comment at this point.

Ms. Kass Sheedy: Under what circumstances do you see any of these units becoming condominiums or owner occupied or, in fact, even being rented to nonstudents? Second question is, I am not asking for particulars on what you are planning to rent the units for, but based on what other similar units rent for in the community when they are designed for students – four students is tremendously more profitable than one family. A unit like this in this neighborhood would likely not rent for something that would be affordable by a middle income family or a professional starting out. Under what circumstances do you see these ever being anything other than student rentals? I understand that you are not making any promises.

Mr. Tucker: Fair enough, and another very fair question. I think, in terms of the first category of nonstudent renters, I think what we tried to do here by modifying the design, the design would make these more appealing to families or nonstudents that want to be in the walkable community close to Main Street. Some young professionals and older professionals want to be close to Main Street that they would consider this design an improvement. One Council member had commented that you have four people making noise side-by-side, somebody who is a young professional might be less likely to rent that

unit because of the noise issue but, perhaps, they would want to rent a single completely detached unit or a semi-detached. From a design standpoint what we were bringing back is a design that we think will encourage the nonstudent or maybe a graduate student to rent here as opposed to some other locations. Regarding the families, I don't want to speak for Mr. Lisa, but I have seen clients who reach a point where they are ready to retire and want to sell properties and obtain that money in a lump sum to pay off the mortgage and go to Florida, if they are lucky. So, there can be from a financial planning standpoint, points in time that people do sell off their assets. That is certainly an option that Mr. Lisa would want to preserve and it certainly would advance the City's interests if that happened. So, that would be a situation where I could see it happening. I understand your point. I know that student rentals are an extremely sensitive issue and if you would permit, I would, again, like to point you to the Comp Plan and the reference to the downtown Newark plan which recognizes that as a balance recognizing that there is a benefit just to getting higher rentals because you are getting a nicer unit which means you can get a higher rent. That is a positive for the City as well. It actually does go out of its way, and I think folks recognize that you can only really get the owner occupied completed if it is feasible – that is a word that is actually used – recognizing that some streets are already rental in nature. That is probably why this street was exempted in the first place from what I have been told of the history. We wouldn't want to rule it out as a possibility, but I do, candidly, acknowledge that these do not plan to go on the market, if they are approved the next day.

Ms. Sheedy: Do you think having four bedrooms per unit makes it even less likely that they might be nonstudent occupied.

Mr. Tucker: Those rooms can be used for other things not just for bedrooms. That, I don't think, would take to out of the realm of that possibility. I know that appraisers when they look at projects like this and banks loan money on projects like this, they want to know that the rental option is there. They are generally going to want to see that type of internal design. They don't make you say that you are going to rent them to get a mortgage but it certainly does go into the evaluation to make these banks loan money even today. I know it is not a planning issue, but it is a real life issue that developers are facing right now. Hopefully, Newark is happy that the market may not be as adversely effecting this area as other areas in New Castle County. It is because of the University of Delaware, quite frankly, in my opinion. I am seeing this in my real estate practice. Real estate has slowed down in Delaware. It has slowed down in Sussex County, first and it is slowing down here now. Newark has seemed to be doing pretty well. I think that is great. The City generally sees that as a good thing, but it is really the University of Delaware that is helping in that regard. So, I know there are pluses and minuses to being in a university town, but it is a benefit, I think, especially when it comes to redeveloping areas that are dated.

Ms. Sheedy: Let me tell you my concern. I actually support infill development and I am not troubled by the density. What does trouble me is that it does look like an attractive building, but we are talking about step one in the redevelopment of what is a very small, sort of enclosed, bounded neighborhood in downtown. The plan does encourage redevelopment of that area, and my concern is that once we have five units of student housing, then what we have is exactly what we have now, but it will look prettier. In many ways the rest of that little neighborhood will take its queue from the this development, both architecturally and in terms of the market that is going to be served. That is my concern. The intent of the plan is that this neighborhood try and become something of a mixed neighborhood in terms of a mixed population, mixed housing styles and so on. My concern is that we are letting that whole concept go. If this plan said, putting aside no stairs, no elevators, whatever, that this was intended for people over 50 years old and that is who you were going to market it to, or it was intended for young professionals with lots of money and there were going to be these sort of contemporary loft kind of thing, that would be somewhat different because we know there, presumably, is always going to be a market for student rentals in town. When we start off with student rentals, I think it is going to leave us no place to go. That is my concern. I don't know how you are going to address it.

Mr. Tucker: I will try my best. That is another great question. Let me try to address it this way. This street is exempt. I don't know if New Street is or not. I suspect it is, but I wouldn't swear to that. I know that Choate Street is because I called the Building Department to confirm it. There was a decision made some time ago that this was not a sensitive area, particularly when it came to student housing because a pattern had already been established. There are certain areas where it is sensitive. I think it makes sense for the Planning Commission to be more sensitive, because you have areas that generally you have to be sensitive and you have some areas where there is a little bit more leeway. I would submit that you are in an area that there is more leeway. We are not asking for double density or triple density. There are some codes that do provide significant density increases for redevelopment. We are asking for one unit. I know it is a smaller combination of lots but it is one unit only. I don't think you are letting the cow out of the barn, so to speak, by giving one unit. I think the way you could sort of monitor this as this street, hopefully, redevelops is, you can ask yourself for everybody that comes in, how many parcels do they have or how many lots do they have? Are we giving them one extra unit or two extra units? Because if you use the parcels as the measuring stick and recognize that you have to give somebody something to make it work because nobody has done it yet, you can regulate it and you are not letting this go and you are not losing control over it. If somebody came in with five parcels, you might want to give them the sixth unit. If somebody came in with three parcels, you might want to give them the fourth. When I read the Comp Plan and particularly when I read the downtown Newark plan, what I think I am reading is a cry out to let something happen here and let's incentivize it. That is the word that is actually used. The incentive really is in your discretion and Council's discretion. Subjectively, you all get to decide and recommend where you want to incentivize and how you want to. I would submit this is a logical way and probably the most persuasive way to incentivize developers to redevelop certain areas of the town. So, I don't think you are letting the cow out of the barn here if you limit it the way you are suggesting.

Ms. Sheedy: Maybe I wasn't clear on my point. I don't have a problem with the density, in fact, and I do certainly support incentivizing infill development and redevelopment. What I have issue with or my concern is with the first redevelopment of this neighborhood being monocultural – students only. I think we have to realistically assume that once it is student rental, it is going to be student rental, and that will set the tone for redevelopment of the neighborhood. As I said earlier, if two of these units were designed for young professionals and were trendy lofty things that would be different. We would be starting out with a mix. We would be starting out saying, yes, we are going to have a mixed population here. I am not sure redevelopment is necessarily having the same kind of neighborhood (student rentals) that we have now, but just making it look prettier. The sole of redevelopment is more than that. It is revitalization. I am having some difficulty seeing how this is revitalizing, except aesthetically. I am really not sure how you can respond to that.

Mr. Tucker: I think I understand your point a little better. I can't speak for tonight, but at every hearing we have had for the Board of Adjustment, for your folks and for the Council, we have not had any immediate neighbors who have come out against this project. Mrs. White has certainly testified and she has offered some interesting ideas and we have talked to her and we will continue to talk to her and certainly respect her opinion. But, there have been no immediate neighbors other than Mrs. White from Newark who have come to oppose. My client has met with or talked to the owners of the surrounding homes or their representatives. There was actually, originally, some support for six or seven units on this combination of lots. I think what you said is absolutely true. Once it is there, it is hard to undo, but the situation we are in today is this street is already there. I think that is why the town exempted it, because the character was already established as student dominant. But, it doesn't mean that we can't, through design standards, encourage nonstudents to rent or own here one day. I think that is what we are doing here in a positive direction through some good comments from Council members and our own thoughts about this. How can we make it, at least, more appealing to that other group as a rental and maybe one day, ownership? I think that is what this plan offers a little bit more than the other plan did.

Ms. Marylou McDowell: I know what you are saying, I think. I think on the outside it does look more appealing to the nonstudent renter, but I think what you are saying is that it is still designed, obviously, for student rentals. I have two children and a husband, and I don't know that I would want a four-bedroom with four parking spot unit, but that is my personal opinion. I want to echo what Jim said about limiting it. If you have a four bedroom unit and four parking spots, I support limiting to four as well, especially since I have been over there visiting family in the cemetery across the way on Saturday afternoons and observed pretty rowdy parties New Street, and observed that the cemetery has been used for overflow parking. I'm concerned with having a large amount of people, more than there is space for, parking with the unit.

The one question I have, and I was trying to say how many or are there any owner occupied homes in the area. You said you talked to owners of the homes, but are there any owner occupied?

Mr. Tucker: I don't believe there are any immediate to us, but Mr. Lisa is the one who spoke to folks.

Mr. Lisa: I believe there is one owner occupant on the entire street – 39 Choate Street. They are across the street and down about four parcels, and I did talk to them. There was an owner immediately adjoining this parcel (Ms. Brackville). She had two or three generations of family living in the house. She has moved recently, and her house has been sold to someone else, and it is a rental. We have been working on this project for awhile. We had a six and a seven unit plan as well and she had seen the seven and the six unit and she, actually, signed a petition, at one point, which we submitted to the Planning Department where she supported. That was before she even had her house up for sale.

Mr. Rob Osborne: I think I was absent at the original discussion so this is all a little bit new to me, but I think the plan before us I think is attractive. I would support something that Ralph brought up which was wrapping the brick around the side that faces New Street on unit one. I think that would add an element of attractiveness to the area and consistency from one side of the building to the other since it is pretty visible from the public right-of-way. I would support limiting the occupants to four unrelated occupants.

Mr. Bowman: Are there any other comments from the members of the Commission? I will open it to comments from the public. In the interest of the hour, I would like anybody who comes to the microphone to speak to please state your name and address and please keep on topic, which is to address the issues of the proposal.

Mrs. White: 103 Radcliffe Drive. I had a quick question at the beginning. The brick that you are proposing, is that going to be real brick or the faux brick such as done on the replacement for the Grainery building which is just a brick façade?

Mr. Tucker: For the record that will be real brick.

Mrs. White: I wanted to first outline what I see as the positives in the revised proposal. I am happy to see the four units facing Choate Street. I think it gives more of a community effect whereas before they were all focusing New Street. Down the street there were some others. It just made them isolated. I also think it is a positive that instead of a line of four they are divided into two and two facing Choate Street and a third positive is that the entrance to the parking behind is from New Street so one doesn't have all that exiting out on Choate Street.

There are some things that I don't like. I think it should be limited to the four units. I think that lone townhouse apartment facing New Street looks like an orphan there. I know the sole purpose is to get an extra unit, but if we are talking about how the development is cohesively put together, I think that is negative. So, I would only want four. I definitely feel that the limit on unrelated occupants in one unit should be four, not five as asked. And, as for the density (this goes back to wanting only four but not the one facing New Street). It has already been talked about that the Comprehensive Plan says four to ten units per acre. Whether that is not clad, I still think the 11.38 dwelling units per acre as a density with four is better than the 14.23. I, again, want to say that I am

disappointed that when these things get built then one is putting garages underneath and putting, basically, the living area pretty much on the third floor. Frankly, if I were to buy one of these, or even if I was a family that wanted to live in them, unless we are living in a true apartment building, one likes to enter and have your living room right there on the first floor. I would have liked to have seen the semi-detached, the double houses, as the ones on Prospect which are very charming but are true semi-detached. Why is nobody objecting? Well, the whole street minus one are rentals with landlords. I have seen very few cases where other landlords come and object to either the density or whatever kind of thing.

The Student Home Ordinance came about ten years ago or something, if it had come earlier, this street would have been one that people may not have wanted to exempt. It already had reached its tipping point, whatever the tipping point is, 75, 80, 90% rental long before. Basically, those streets that are exempted from the Student Home Ordinance are those that reach that tipping point long before. So, if this could have come earlier, maybe this street could have had more of the diversity that, perhaps all of us and some of you on the Commission, would have liked.

If you could have put two that you enter through the first floor, there is your living room, and then not had garages underneath, I think with four units you would have room to have all surface parking in the back and meet your parking. I normally don't like to cover more of a lot with macadam, but in this case, I think it would have been nicer because these are going to be very high. Although, they will meet the 35 ft. limit, they are going to somewhat tower over what is nearby. Again, it has been said that there are really four lots, so you should have an incentive to five units. Those two lots, first of all there are only two buildings on them. Yes, maybe when we go back in time and history there were four. They are very, very narrow. There are still places in Newark where you see the very narrow lots and they are deep, and these are narrow and deep.

I personally think brick and frame, what was proposed before, was fine. I live in a brick and frame house and I like the two types of things. I don't know what people up here want, but I think you can build a nice brick and frame and, therefore, wrap it around to your New Street side and have something that has the same kind of quality look and then, perhaps, therefore, be able to do this and not have it be quite as expensive for you, but really have it still high quality, with the brick and frame. I am not sure the people at the Commission would agree with that. For me, I think it would be nice.

My conclusions are, limit it to four units, what you have now, two and two, facing Choate with the drive in the back from New Street. Limit it to four unrelated occupants per unit. I did want to say that it was reviewed about the BLR and that if the developer had been told that that chance had happened earlier (inaudible) because the acreage is less than the amount needed, it wouldn't be allowed to be done here, they would need a larger amount of acreage to do it. Granted, I supported him at the meeting from a matter of fairness, but even that being said, I think it should be limited to four units.

Mr. Bowman: Thank you Mrs. White. Is there anyone else who wishes to speak to the matter at hand.

Mr. Benjamin Vesce (sp.): 10 Thunder Gulch. One of the Council members had brought up, I think, was elevator usage, but also during the parking spaces discussion, I was thinking, what were the accesses for handicapped people in wheelchairs or mental disabilities that need extra care?

Mr. Tucker: In terms of Federal requirements for the handicapped, they will have to be followed per Building Code, and I don't know off the top of my head what they are for this project. I think they do get worked out as part of the ultimate architectural submission for the structure in the building permits. I can't say on the record for sure what they are, but whatever those guidelines are, we will certainly follow them.

Mr. Bowman: If there is no one else who wishes to speak, I will bring it back to the table. Any further questions for the developer or for the Planning and Development Department?

Mr. Begleiter: Maureen, I am curious why the Planning Department did not make a recommendation on this proposal.

Ms. Feeney Roser: We stand by our original proposal which was four units without a cap. If you remember that the idea of a cap came up during the Commission's deliberations and we certainly didn't have a problem with that; and we believe that going to five units with four people in a unit would meet the Council's concern of trying to promote home ownership or rental to other than students in the area by design, which has yet to be tried in the area. So, when Roy and I talked about it, we didn't think it was much different to say, go five units and cap it at four or go back to the four units and allow them to have five in each. Our recommendation would be to keep it in the 20 density range.

Mr. Begleiter: Do you have a particular view, leaving aside the density of the occupancy for a moment, having a separate stand alone unit like this?

Ms. Feeney Roser: When we listened to the Council discussion about the project, designing the units so that they would not be four in a row did seem to have some value as to being more attractive to either a family rental or for owner occupancy. So, we think it is actually a better plan to have them separated. The issue really for us would be the density of the site.

Ms. Sheedy: I am not sure I understand. Does the Planning Department simply want to see the property at the limit of 20 or whether it is four units or five units, or does the Planning Department still prefer the four unit configuration?

Ms. Feeney Roser: Honestly, I think that was what Ralph was getting at. I think, based on the discussion at the Council meeting that design may have an impact on how these units may be used in the and considering it is a strategy that the City has not yet tried, the Department is not opposed to five units, provided that there is an unrelated renter cap on it that keeps it within the density that we were agreeable to in the beginning.

Mr. Bowman: In other words, the ball is in our court.

Mr. Osborne: Just one more question and this is really for Mr. Tucker or Mr. Lisa. The window on the bottom floor, I am assuming those are part of the garage area. Would that be correct?

Mr. Lisa: Correct. They are only in the front. They are not on the side. We did not put them on the side because we were concerned for safety or people breaking in. We thought it was a potential concern by having windows on the side on the lower level. That would be, perhaps, where the HVAC systems and hot water tanks and those kinds of things would be at the back portion of that as Mr. Tucker had indicated, that should be the garage. There would be a two stall garage in the back of the house and then parking outside of the garage and then in the forward section would be where the utility area would be.

Mr. Osborne: Is that a separate room in the front of the garage?

Mr. Lisa: First of all, they haven't been totally designed. The concept would be to come in the front door and you would probably be in a hallway where you would go upstairs into a family room and kitchen. Then there would probably be a hall that you would walk through to go back into the garage.

Mr. Osborne: Would those facilities be visible from the outside? Maybe just a suggestion would be to frost those windows or something like that if the utility equipment was going to be visible through those windows.

Mr. Lisa: I would anticipate that we wouldn't design it so they would be visible from in there.

Mr. Osborne: Or even the cars for that matter.

Mr. Lisa: They definitely wouldn't be. They would definitely be in the back. That would probably be storage, and then probably behind that would be where the HVAC systems. To be honest with you, we have not done internal floor plans.

Mr. Osborne: I realize this is nothing Code related or anything like that; it is just something to consider.

Mr. Bowman: I have one last quick question. I know that the Water Department mentioned fire flow tests so, am I correctly assuming that all these buildings will be sprinkler protected?

Mr. Lisa: That is correct.

Mr. Bowman: The Chair will entertain a motion.

MOTION BY OSBORNE, SECONDED BY BEGLEITER THAT THE PLANNING COMMISSION RECOMMEND THAT:

- A. CITY COUNCIL APPROVE THE REZONING OF THE .3513 ACRE PARCEL AT THE SOUTHEAST CORNER OF THE INTERSECTION OF CHOATE AND NEW STREETS FROM RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) TO BLR (BUSINESS LIMITED RESIDENTIAL); AND,
- B. THAT CITY COUNCIL APPROVE THE CHOATE STREET COMMONS MINOR SUBDIVISION PLAN, AS SHOWN ON THE APEX ENGINEERING, INC., PLAN, DATED DECEMBER 18, 2007, AS FURTHER REVISED WITH THE CITY DEPARTMENTAL RECOMMENDED CONDITIONS; AND WITH THE FOLLOWING ADDITIONAL CONDITIONS:
 1. THAT THE DEVELOPER VOLUNTARILY AGREE TO DEED RESTRICT THE PROPERTY TO LIMIT THE TOTAL MAXIMUM NUMBER OF INDIVIDUALS RESIDING IN EACH UNIT TO ONE SINGLE FAMILY OR FOUR UNRELATED INDIVIDUALS; AND,
 2. THAT THE DEVELOPER PREVENT PARKING IN NON-DESIGNATED PARKING AREAS WITH LANDSCAPING; AND,
 3. THAT THE ARCHITECTURAL DESIGN OF THE STRUCTURES BE CONSISTENT ON ALL BUILDING ELEVATIONS VISIBLE FROM PUBLIC WAYS.

VOTE: 5-1

AYE: BEGLEITER, BOWMAN, BROWN, McDOWELL, OSBORNE,
NAY: SHEEDY
ABSENT: DRESSEL

MOTION PASSED

- 3. REVIEW AND CONSIDERATION OF THE REZONING FROM RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) AND RS (SINGLE FAMILY, DETACHED) TO BLR (LIMITED BUSINESS – RESIDENTIAL) AND MAJOR SUBDIVISION OF A 2.111 ACRE PROPERTY ON THE WEST SIDE OF NEW LONDON ROAD JUST SOUTH OF THE GEORGE WILSON CENTER FOR THE ADDITION OF 16 TOWNHOUSE STYLE APARTMENT UNITS TO THE EXISTING CAMPUSSIDE SUBDIVISION.**

Ms. Feeney Roser summarized her report for the Planning Commission which reads as follows:

“On August 20, 2008, the Planning and Development Department received an application from North Campus LLC, Terry Lane LLC, and Ernest M. Congo for the rezoning and major subdivision of their 2.111 acre properties at 281-285 New London Road. The applicants are requesting that the existing CampusSide development containing ten residential units be rezoned from RM (multi-family – garden apartments) to BLR (business, limited residential) and the rezoning of three additional parcels to the north of CampusSide from RS (single-family, detached) to BLR (business limited, residential). The proposal, if approved, will create two tax parcels (parcel #1 - .731 acres and parcel #2 – 1.387 acres) and a new street to be known as Emily Bell Lane along the site’s northern boundary, adjacent to the George Wilson Center, to serve this development, the George Wilson Center and development on the Newark Country Club property. Major subdivision is also requested to add six new units to the CampusSide complex (adding two units to an existing four-unit building and adding a new four-unit building along Emily Bell Lane), with the other new parcel (parcel #1) to be developed with two separate building sets – one building along New London Road is proposed as six-unit townhouse style apartments and another on Emily Bell Place with four townhouse apartment units.

Please see the attached Hillcrest Associates, rezoning and subdivision plans, building elevations, supporting materials and Planning Department Exhibit A.

The Planning and Development Department’s report concerning the CampusSide/Emily Bell Place project follows:

Property Description and Related Data

1. Location:

West side of New London Road adjacent to the north to the George Wilson Center property and 75 feet north of the intersection of New London Road and Ray Street.

2. Size:

The site is currently divided into two zoning districts: an RM zoned portion: tax parcel # 13-050 = .972 acres; and an RS zoned portion: tax parcels #13-043, #13-045 and #13-047 = 1.13 acres. The rezoning and subdivision, should it be approved, will create two BLR zoned parcels and a new road. Parcel #1 will be .731 acres and parcel #2 will be 1.387 acres.

3. Existing Land Use:

There are currently ten residential units in the existing CampusSide development on the southern end of the site, and two single-family dwellings at the northern portion of the site.

4. Physical Condition of the Site:

The CampusSide/Emily Bell Place subdivision is proposed for developed sites containing ten residential townhouse apartment type dwellings and two single-family dwellings.

In terms of topography, the property slopes gently east to west and north to south. At the northern boundary fronting on New London Road is a single family dwelling with two abandoned and deteriorating out buildings and an old chimney in the rear yard. Adjacent and immediately south of that house on New London Road is another single family dwelling with a shed and a gravel parking area. The southern portion of the site contains the existing CampusSide development with

one set of six townhouse style apartments fronting on New London Road and a set of four townhouse style apartments to the rear.

Regarding soils, according to the US Department of Agriculture's Natural Resource Conservation Service, the CampusSide/Emily Bell Place site contains Chester Loam and Glenville Silt Loam soils. According to the Natural Resources Conservation Service, Chester Loam is developed soil for which no limitations are recommended for the proposed use. Glenville Silt Loam soils, however, have "severe" development limitations for the use proposed because of its "wetness." In this regard, the Natural Resources Conservation Service indicates that, "a rating of severe does not mean that a soil cannot be used for the intended use. However, it does mean that severe limitations exist that must be overcome with proper design or operation." As a result, the applicant will be required to include in the construction improvement plan for the site proposed engineering methodologies designed to take into account this soil's limitations.

5. Planning and Zoning:

As noted above, the northern section of the CampusSide/Emily Bell Place site is zoned RS. RS is a single family residential zone that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

The RM zoning at the balance of the property is a multi-family residential zoning that permits the following:

- A. Garden apartments, with special requirements.
- B. One family, semidetached dwelling.
- C. Boarding house, rooming house, lodging house, but excluding all forms of fraternities and/or sororities, with special requirements.
- D. Nursing home, rest home or home for the aged with special requirements.
- E. One-family detached dwelling.
- F. The taking of nontransient boarders or roomers in a one-family dwelling by a family resident on the premises, is not a use as a matter of right, but is a conditional use subject to special requirements, including the requirement for a rental permit, and provided there are not more than three boarders or roomers in any one-family dwelling.
- G. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
- H. Public and private elementary, junior, and senior high schools.
- I. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- J. Municipal utilities, street rights of way. treatment plant.
- K. Temporary building, temporary real estate or construction office.
- L. Utility transmission and distribution lines.
- M. Public transportation bus or transit stops for the loading and unloading of passengers.
- N. One-family town or rowhouse subject to the requirements of Sections 32-13(1) and 32-13(c)(1).
- O. Student Homes, with special requirements

RM zoning also permits with a Council granted Special Use Permit the following:

- A. Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the neighborhood, subject to special requirements.
- B. Substation, electric, and gas facilities, provided that no storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
- C. Physicians' and dentists' offices, subject to special requirements.
- D. If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- E. Police and fire stations, library, museum, and art gallery.
- F. Country club, regulation golf course, including customary accessory uses subject to special requirements.
- G. Professional offices in residential dwellings for the resident-owner of single-family dwellings permitted subject to special requirements.
- H. Customary Home occupations with special requirements.
- I. Public Transit Facilities.
- J. Private (nonprofit) swimming clubs.
- K. Day Care Centers with special requirements.

Please note that apartment uses in RM district require lots of a minimum of one acre in size.

The requested zoning for the entire site is BLR (business limited residential). BLR zoning permits the following:

- A. Churches or places of worship

- B. Schools
- C. Parks and Playgrounds
- D. Municipal utilities uses
- E. Public transportation bus or transit stops
- F. Social club, fraternal, social service, union and civic organizations
- G. Accessory uses
- H. Hospitals
- I. Apartments in conjunction with any nonresidential uses permitted in the district.
- J. Offices for professional services and administrative activities
- K. Undertakers
- L. Barber shops and beauty parlors
- M. Personal service establishments
- N. Specialty retail stores with a maximum floor area limited to 5,000 square feet [non-food]
- O. Finance Institutions, banks, loan companies
- P. Six apartment units in any single detached or semi-detached residential building
- Q. Bed and breakfast, with special requirements

BLR zoning also permits, with a Council granted Special Use Permit, the following:

- A. Police and fire stations, library, museum and art gallery
- B. Golf courses and country clubs
- C. Electrical and gas substations
- D. Day care centers
- E. Drive-in or curb service for other than eating establishments

The CampusSide/Emily Bell Place proposal meets or can meet all applicable Zoning Code area requirements.

In terms of adjoining properties, the lands immediately to the north of the site are zoned RS and contain the City's George Wilson Community Center. RS zoned lands, owned by the First Presbyterian Church that front on Nottingham Road, lie west of the site. Two RS (single family, detached) zoned rear yards of single family properties that front on Kennard Drive in Terry Manor are also located adjacent to the southwest corner of the development. A small RM zoned four unit apartment building lies immediately to the south of the site on land fronting on New London Road. The BC (general commercial) zoned Courtyard by Marriott at the University of Delaware lies east of the site across New London Road.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for single family residential (medium density) land uses at the site. The Plan recommends a density of four to ten dwelling units per acre for this land use category. The CampusSide/Emily Bell Place proposal calculates to 12.3 units per acre.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related

recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the rezoning and minor subdivision plans, building elevations and supporting materials call for the replacement of two of the single family detached existing structures fronting on New London Road with two buildings – a six unit townhouse style apartment building identical to the existing CampusSide complex fronting on New London Road; and another building also similar in design to CampusSide with four units which will front on the proposed Emily Bell Lane. The plan also calls for adding six more units to the CampusSide complex. Currently, there are two buildings on the CampusSide property. One building has six units closest to New London Road and the other existing building has four units. Two new units are proposed to be added to the existing four-unit building, and a new four-unit building is proposed along Emily Bell Lane.

In sum, sixteen units will be added to the ten existing units at CampusSide. As shown on the building elevations and noted in the project description, the units will have individual front entrances and each unit is proposed to include a three car garage. Two additional outdoor parking spaces will be assigned to each unit. The units will be three stories in height.

To evaluate the proposed architectural design, the Planning Commission may wish to consult the design review criteria in Municipal Code, Chapter 27, Subdivision and Development Regulations, Appendix XIV, Section (b).

Access to the site will be from one two-way driveway off of New London Road, existing, and one two lane two-way driveway off of the proposed Emily Bell Place. The new roadway will align with the existing access to the University property on the east side of New London Road. Please consult the landscape plan for landscaping details.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee, consisting of the Management, Planning and Development, and Operating Departments has reviewed the CampusSide/Emily Bell Place rezoning and subdivision plan and has the comments below. Any required revisions should be made prior to the plan's review by City Council.

1. The Planning and Development Department indicates that:

- Based on community concerns about the additional student type housing and the Comprehensive Plan IV language calling for careful evaluation of uses of this type, the proposal to add new 16 units may raise issues about the density and character of the proposed development.
- If the proposed townhouse style apartments are approved, the properties should be deed restricted to specify a maximum number of unrelated individuals to reside in each corresponding to the number of bedrooms per unit. Originally, the Department had suggested the property be deed restricted to allow a maximum of five unrelated individuals per unit, however, it has come to our attention that some of the units have six bedrooms units and the developer would like to rent them out accordingly. In response to the Departmental request to limit the number of unrelated individuals allowed to reside in a unit to the number of bedrooms per unit, the developer has agreed to install Emily Bell Lane at the initial stages of the construction sequence for the benefit of the City to serve the George Wilson Center and the future development of the Country Club site. The Department recommends that this roadway be constructed and available for use prior to the issuance of the first CO of the site.

2. The Public Works Department indicates:

- The developer will have to provide identification and boundaries for specific soil classifications. Since there are two soil types, the boundary and classifications need to be shown.
 - A letter of no objection is required from DelDOT prior to review by Council.
 - Metes and bounds for the northern and western boundaries for Emily Bell Lane will need to be provided.
3. The Parks and Recreation Department indicates that:
- The developer should consider internal sidewalks with connections to public sidewalks.
 - Construction should be limited along the western border to protect trees.
 - The ten (10) American Yellowwood trees proposed should be replaced with Eastern Red Bud or Crape Myrtles or a combination of the two. These trees should be planted 8 ft. behind the property line.
4. The Police Department notes that while the development meets Code for parking, the plan does not accommodate guest parking. In addition, the Department indicates that adding 16 new units will result in more residents and cars in the area, thereby potentially increasing calls for services.
5. There are no other Departmental comments.

In addition to the City Departmental comments, DelDOT indicates that a signal agreement for the intersection of Emily Bell Place and New London Road will be required.

Recommendation

The Planning and Development Department believes that the proposed rezoning and major subdivision for 16 townhouse apartments for the full site conforms, in general, to the land use guidelines in Newark Comprehensive Development Plan IV. In addition, the CampusSide/Emily Bell Place plan corresponds to the development pattern in the immediate neighborhood of the site. The Department also believes that, with the Subdivision Advisory Committee recommended conditions, the CampusSide/Emily Bell Place rezoning and major subdivision will not have a negative impact on adjoining and nearby properties. Most importantly, the plan will provide a to-be-signalized roadway connection that will serve the site, the Wilson Center, and the new Country Club Estates development and, in addition, improve traffic from the University's Clayton Hall and Marriott Hotel sites. Because this roadway replaces the proposed Newark Country Club connection to Country Club Drive, it will make a significant contribution to improving traffic flows from that site through this neighborhood.

The Planning and Development Department, therefore, suggests that **the Planning Commission make the following recommendation to Council:**

- A. That City Council approve the rezoning of the 2.11 acre properties at 281 New London Road from RM (multi-family – garden apartments) and RS (single-family, detached) as shown on the Planning Department Exhibit A dated November 5, 2008; and,**
- B. The City Council approve the CampusSide/Emily Bell Place major subdivision plan as shown on the Hillcrest Associates, Inc., plan dated, August 21, 2008, as revised, with the Subdivision Advisory Committee recommended conditions.”**

Ms. Feeney Roser: The developer is here. I know they have a PowerPoint for your review and I will be happy to answer any initial questions you might have.

Mr. Bowman: Are there any initial questions for the Planning and Development Department from the Commission?

Ms. McDowell: Are there any occupant restrictions on the buildings that currently exist.

Ms. Feeney Roser: There are not.

Mr. Begleiter: Maureen, the Planning Department said that it originally wanted to impose a limit of five and when it proposed that, the developer came back and said we will build the road first and what happened after that? Your recommendation doesn't address it. You said originally that the Planning Department is making no recommendation for a limit of any kind on the occupancy of those units.

Ms. Feeney Roser: No, we are recommending that you limit it to the number of bedrooms per unit. So, if there is a six bedroom unit that six people would reside in that.

Mr. Begleiter: And, where is that recommendation?

Ms. Feeney Roser: In the departmental comments, it says "If the proposed townhouse apartments are approved, the property should be deed restricted to specify a maximum number of unrelated individuals to reside in each corresponding to the number of bedrooms per unit."

Mr. Begleiter: Where is that?

Ms. Feeney Roser: The second bullet point under the Planning and Development Department on Page 7.

Mr. Begleiter: Was I right about the trade off? And that is basically what happened. They said they were going to build the street anyway, they just said they would build it first. And you said okay, we will give you the six.

Ms. Feeney Roser: We also didn't know at the time that many of the units or some of the units were going to be designed to be a six bedroom units. Basically, to recommend a cap initially, we were looking at the number of parking spaces on the site and saying it should be limited to that number. That is where we came up with the five per unit. In conversations with Mr. Mayhew, we found that the apartments were not going to be designed in the way we had assumed but that some of the units were six-bedrooms and he would like us not to limit it to five per unit. In exchange, in those conversations, we thought, well, if you build the road first, then that would be something that would be beneficial to the community and, therefore, we could recommend limiting the number of unrelated individuals per unit to the number of bedrooms in the unit would be fair.

Mr. Begleiter: Do we know how many of the 16 units will have six bedrooms?

Ms. Feeney Roser: That I don't know, perhaps the developer can tell us that.

Mr. Osborne: So, there is a proposed new light signal at what will be a four-way intersection where the entrance to Clayton Hall is?

Ms. Feeney Roser: Yes, DelDOT is requesting that this developer enter into a signal agreement, and I know when the Courtyard by Marriott was considered, there were discussions about them participating in a future signal agreement, when it was warranted.

Mr. Osborne: The proposed intersection is not the intersection down the hill closest to the hotel. It is up the hill where the original entrance to Clayton Hall is.

Ms. Feeney Roser: Yes, that is where they align.

Mr. Bowman: I believe that is also going to serve the Wilson Center, will it not?

Ms. Feeney Roser: Yes, it will. Right now access to the Wilson Center is off of New London Road and that is not an ideal situation.

Mr. Bowman: That driveway in and out of the Wilson Center is really nasty spot. It could even get to the point where the primary flow in and out of the Wilson Center would be at a signal. It would be much better to what exists there now.

Mr. Osborne: So, essentially, the current entrance to that parking lot at the George Wilson Center would be removed as part of this plan.

Ms. Feeney Roser: That would be our recommendation. It would give them more space to work with.

Ms. Feeney Roser: And then it would enter into a signalized intersection at New London.

Mr. Bowman: It would be a huge safety improvement.

Ms. Feeney Roser: For leaving Clayton Hall, too, if you have ever tried to take a left out of Clayton Hall.

Mr. Osborne: I guess I am trying to picture it. You have the intersection up the hill at Cleveland Avenue and New London Road and the traffic that builds up there at rush hour. You have almost got a steady stream of traffic coming from Cleveland Avenue onto New London Road or the other way and then I am picturing a periodic red light there at Clayton Hall; and I am picturing a big backup up the hill.

Ms. Feeney Roser: I am sure DelDOT is going to have to address the signal timing and how it is activated to try to alleviate some of those concerns.

Mr. Bowman: I think part of the problem you have between the lights where the drugstore is, which I believe is Country Club Drive and the next light you come to is clear out to Cleveland Avenue. Really what you need is some traffic calming in that area because once people are coming in or out of town clear those lights at Cleveland Avenue and Country Club, that area gets to be pretty speedy at times. I think a light midway in between (1) would reduce accident potential for people coming out of the University side and (2) certainly would protect people coming in and out of the George Wilson Center, which is, in part, a blind driveway now. People sort of pop up over a hill and since they are coming downhill, they are picking up speed when they are coming on to the George Wilson Center. There are times that you can't turn left out of that George Wilson parking lot for the traffic without risking getting killed. So, I think that street and a light would improve the safety immensely on that stretch of roadway.

Mr. Osborne: I agree with that. I am also picturing a backup from what would be the new light through Corbit and Ray Streets.

Mr. Bowman: If it were tripped properly, I don't think you will see that problem.

Mr. Osborne: That is a flashing light currently, right?

Mr. Begleiter: It is only going to get worse when Country Club Estates is built and suddenly that street is no longer just serving the Wilson Center.

Mr. Bowman: If it isn't signalized then, it would really be a problem.

If there are no further questions, we will turn it over to the applicants and let them make their presentation.

Mr. Kevin Mayhew: Good evening, I am Kevin Mayhew. I live at 103 Elma Drive in Newark. Along with me tonight is Matt Longo from Hillcrest. I have Mr. Congo here, the owner of the Emily Bell Place that we are proposing here tonight.

Before I begin the presentation, I want to answer a couple of the points that were brought up just to clarify. The road timing was initially going to be timing with the Country Club Estates development, which could be two or three years away. So, when I met with Roy and Maureen, requested I put it in under my phase. I conceded putting it in

for that unrelated renter to the number of bedrooms restriction. I really don't want a restriction at all, so tonight I am going to go over some of the reasons. The signal contract with DelDOT, we have not finalized anything. We haven't even begun discussions, but I am hoping that the signal is going to go in when Country Club Estates is put in. Just because 16 more of my units get built on that road won't call for a signal, then but maybe when Country Club Estates gets put in, but that is something DelDOT will decide.

I have a short PowerPoint presentation. Let me go through the slides and we can address some of the issues.

Existing structures on the lot right now – here is the house at 287 New London Road and then up the road is a small single family home at 295 New London Road. So, there would be two houses that would be demolished.

The overall plan – I think you have seen it. The CampusSide development to the south, existing 10 aren't numbered and then the new ones that we are proposing are the ones numbered.

If you have driven down New London Road you see the product I have built in the first phase, we plan on duplicating that for the second phase. It is the same full brick on half brick. We will duplicate the same look. From all the comments I have heard, everyone loves the architecture there.

Going down Emily Bell Lane will change up a little bit. We will add a little more stucco to it, but still have the full brick in there with the stucco combination. There will be two of these units. One will be Mr. Congo's, the second one back on the lane will be the addition to CampusSide. On the existing CampusSide we are planning on taking the four unit building in the back and adding two more units to the right of it. And, this is a picture of what that will look like.

Right across the street is the Marriott Hotel, just to remind everybody that along with that hotel, we have the Christiana Towers and all the new dorms. There are over 3,000 students on that side of the road, plus the hotel.

We are going for BLR here. About a year ago, I started with Hillcrest looking into this project and asking them to do it with an RM zoning requirement. We got halfway through the process and City Council was reviewing the Country Club Estates project. They came to the Country Club Estates developer and said find another way out – we don't want to have access out to Country Club Drive; we want some other way out to Route 896. The next morning I called Bill Stritzinger and said I have the perfect solution to your problem and I think it will be better for the City overall if we put a road out to Clayton Hall. So, when that idea came about, we could no longer use the RM zoning to fit in because the six pack building that we are proposing to the north had to slide down 60 ft. to accommodate the road. And, when you slide it down, you lose your set setbacks, you lose your 50 ft. between buildings and there would be six variances we would have to ask for to abide by the RM zoning. The concept stayed the same except, but we are asking for BLR because now we are providing that road access to Route 896 for the George Wilson Center and for the Country Club Estates.

The owner occupant argument comes up a lot these days. I am not going to sit up here and say that these are going to be owner occupants right now. There is a need right now for these rental units. We have a waiting list of 40 groups for the second phase of this. We are providing something that is not out there right now. We are providing a five or six bedroom unit that a lot of these groups are looking for. All the apartments on Main Street are two, or three, or four bedroom units and they are doubling up on those. A lot of students out there are looking for their own single bedroom. So, we have a need out there for that now. The roadway is going to pave access for 272 single family homes. So, all the owner occupants are going to be right across that stream in a nice large development. I do plan on keeping the status where these could be changed into condos sometime and facilitate single families. The question comes up, when would that happen. If the UD decides to build on the Chrysler Plant and make it mandatory that all

sophomore and freshmen live on campus, the need for these type of rentals might diminish and I might have to change these over to condos. Five or ten years down the road I don't know what the rental market is going to be like, but I want that flexibility to be able to change them over to condos and sell them all for single family residences.

The units are large. You have heard that I am building five and six bedroom units. The reason is if I decide to change them over to condos. I don't want to be stuck with a unit that is 1,400 sq. ft. and try to sell that as a beautiful condo. They are looking for space and by providing the five or six bedroom floor plans, it will allow the flexibility to take down walls and move space around and have that master bedroom that those type of clients will want. So, I am building the units so that, hopefully, in the future they can be converted into a really nice condo for sale and have the square footage that is required. I have also seen that owner occupancy is working in the City. These types of developments are actually freeing up the other single family homes in the area, in the City, to provide the single family homes for sale to owner-occupants that are necessary. I am a real estate agent also, on the side, and I have listed two houses on W. Place and they have been for sale for over a year. One of them finally settled to a single family where three years ago that would have been snatched up by a landlord in 30 days. So, it is working. The landlords like myself and Kevin Heitzenroder and the other guys out there aren't buying those up. We are providing these complexes for the students and increasing the density in these infill projects taking the pressure off of the single family areas that can resort back to owner occupants. I am seeing it firsthand right there on W. Park Place.

The deed restriction issue is a good question tonight by Ms. McDowell. The first phase was not deed restricted. I don't want to be deed restricted at all. That might be unrealistic, but if we do say it is one per bedroom, the six pack has a big A frame structure on the front that allows the attic space to have two full bedrooms up there – really nice bedrooms and a full bath. The end units don't have that large dormer jutting out so there is one big attic room up there. They are treating it as one bedroom right now. Next year I already have one of them rented to two students. It is huge. It is 600 square feet as a bedroom plus a full bath. I want that flexibility to put six people in that unit next year. I would be happy with a six person per unit cap instead of saying one per bedroom, because if you said one per bedroom I could just slap a wall up in that master bedroom and create two more bedrooms. And, I don't want to do that. I think the space looks better as one large space. The kids love it. There are ten ft. ceilings up there and two dormers give it a lot of character. I stand up here tonight hoping that if there is a restriction it will be capped at six per unit.

I will open it up to any discussion you might have.

Mr. Bowman: Are there any questions?

Mr. Begleiter: How many of the new units would have the space capable of handling six bedrooms?

Mr. Mayhew: Mr. Congo's units – the six pack along the front – as planned have the wings two, five bedroom and the four center have six bedrooms. His four pack along Emily Bell Lane have two center ones of six bedrooms and two wings with five bedrooms.

Mr. Begleiter: So, six units would have six bedrooms and the remainder would have five bedrooms.

Mr. Mayhew: Yes.

Ms. McDowell: How many parking spots do you have?

Mr. Mayhew: We are providing five parking spaces per unit. Three underneath in the garage, two out back. The police commented that there is no guest parking. That allows for guest parking. Not every units brings five or six cars. So, if they bring three or four

they have the outside spots for their guest to pull up and use. And, that is what is happening.

Mr. Osborne: Ralph, could you repeat those numbers again for me?

Mr. Begleiter: What I think I heard the developer say is that four of the units in the six pack would have six bedrooms in them. So, that is four units with six bedrooms and that two of the units in the remaining four pack, actually it is two four packs over there.

Mr. Osborne: So, that is another four units.

Mr. Mayhew: Out of Mr. Congo's group – Emily Bell Lane – out of the ten units there are four with five bedrooms and six with six bedrooms.

Mr. Begleiter: That is a lot more than what you said earlier. The distinction between CampusSide and the Congo units is probably legally significant, but for the purposes of planning and zoning it is insignificant. You are proposing 16 new units, how many of the 16 will have six bedrooms?

Mr. Mayhew: Out of the 16, there will be eight.

Mr. Begleiter: And the rest will have five.

Mr. Mayhew: Except for the two that I am adding onto CampusSide; those are four bedroom units.

Mr. Begleiter: So, eight will have six; six will have five; and two will have four.

Mr. Mayhew: Correct.

Ms. Brown: You are talking about conversion to condo, why not do it as a condo now? Looking at the pictures, they are nice looking places and there are condos and townhouses up the road and down in the back.

Mr. Mayhew: After trying to sell two houses for a year, there is not a market right now for that. The price I am paying to build these, it was over \$300,000 a unit to construct these. No one is willing to pay that money right now for a condo. I know that first hand. The market is not there yet. There is going to be 272 structures right across the stream. Hopefully, there is a demand for them when he starts that construction.

One of the other questions that I think Mr. Osborne asked, I did meet with Charlie Emerson out at the George Wilson Center and when we do make the new entrance along Emily Bell Lane, he does plan on closing off the existing entrance and regaining three parking spots that he will lose when he makes the new entrance. So, he won't lose any net parking spaces.

Ms. McDowell: I am just curious about the significance of "Emily Bell."

Mr. Mayhew: Mr. Congo's grandmother lived on this property so he wanted to make sure her name stayed with the property.

Ms. McDowell: Excellent, because I was just sitting here thinking that I remember when there were all families in that area and it is a shame that we are losing a lot of the history of the area.

Mr. Mayhew: Mr. Congo was born in the house on the property. It is no longer there.

Mr. Bowman: We will open discussion to any members of the public that wish to comment. Please come forward, state your name and please, given the lateness of the hour stick to the issues.

Mrs. White: 103 Radcliffe Drive. I was glad to have the question answered about Emily Bell and that is a nice thing. I would have preferred this all to be zoned RM, and it seems to me that could happen. I did not have time to review the area specs for BLR vs. RM, and the applicant talked about moving the six pack down and then, therefore, the side requirement were not met. But, it seems to me they could be met if the number of units were reduced. I guess I am bothered that the BLR zoning is being used, not only for what was already built, but for the additional parts of the plan before you. I think it is a poor use of BLR. There are other ways of allowing it to maintain the RM zoning, although, I haven't had the time to work that out.

The Comprehensive Plan calls for four to ten units per acre, and this is 12.3, a bit more. Again, I feel that it is too many units for an area that is going to add a lot more traffic. Now that we realize that there are not just four unrelated people per unit but, in fact, one may be having five bedrooms or even six, that one is putting six in one of these. They may be large, but I feel that almost mini rooming houses are being created by having this many, presumably, students put into one unit and here we are building 16 more units. So, that concerns me. It seems to me that the size of the units could be reduced so that one has just four bedrooms and certainly not the equivalent of six. I am bothered by that many people being put in. So, if we have 86 more renters in them, it could, in fact, be 86 more cars but it is going to be quite a few cars and its going to add quite a bit of traffic just from this front right in front of us. So, that is a concern.

Recently Council rejected a development further down on New London Road (203) for various reasons, but one was adding an apartment building right there that would add three different units. And, one of the concerns there was traffic, and that was just a little tiny thing. Here we are adding quite a huge amount of traffic with this project.

Basically, I am feeling that this needs to be cut down in the number of units and/or the number of unrelated occupants per unit. I am concerned about the overall density and then putting so many individual unrelated persons, students or otherwise, inside them. That is pretty much my comments. Thank you.

Mr. Bowman: Is there anyone else who wishes to speak to this item? If not, we will bring it back to the members of the Planning Commission for any further discussion.

Mr. Begleiter: I would like to commend the developer in this case for offering us another example of good civic public service by helping to solve the transportation and traffic and access issues to several different properties of interest to the City, the Wilson Center; of interest to the University, the Clayton Hall Conference Center; the prospect of getting a traffic light is a positive one not a negative one to be triggered when there is traffic coming out of the Conference Center late t night, almost never at rush hours; it will help the Country Club Estates development in the future; and I think the compromise of having the developer build that road early in the construction phase and put it in place so when Country Club Estates gets going, they will know right from the start where that access is going to be and we, as a city, will know where the traffic will be coming out, will help that development proposal as well. So, I think that compromise is a good one for us. I also think it is great to sustain a nice little piece of Newark history by preserving the name of Mr. Congo's ancestor, Emily Bell. While that is not a particular planning issue, I think it does, in my mind, go to the quality of the project that is proposed here reflected also in the quality of the development proposed itself. I would move to approve this proposal as the Planning Director has recommended and I would agree with the idea of imposing a six person limit on units that have more than five bedrooms so that, as the developer suggested, we can't just start putting up walls in the lofts to create more bedrooms and thereby expand the occupancy rate.

Ms. McDowell: By stating it that way, then you are putting the six person limit on units that have more than five bedrooms but on ones that have less, it would be unlimited?

Mr. Begleiter: Well, I guess you would have it say, as the Planning Director said, corresponding to the number of bedrooms but with a six occupant cap. How about that. Good suggestion. Thank you.

Mr. Bowman: We have a motion and a second. Is there any further discussion?

Mr. Osborne: This is just an observation. I agree with a lot of what Ralph is saying. I think it is a nice, attractive property and I think you have done a lot of good things with it. And, it has been a little while since I have actually driven by it, but the picture that was submitted in the packet indicated air conditioning units out in the front. It is one of those pet peeves of mine that if at all possible conceal those behind the building structures instead of the front. I think it adds an element of attractiveness. I don't know if that is feasible on the proposed units to do that, but that is something that I would suggest.

Mr. Mayhew: Some of developers have gotten around that by mounting them above the garages on the back of the units. My (inaudible) recommended against that – issues of maintenance getting to them and then having them actually fall on any students below. I am going to conceal those with landscaping. I just did not want to plant at the time (summer), but I plan on planting landscaping around those in the spring, so I will buffer that from view. That is what I plan on doing at the new units, too.

Mr. Osborne: I didn't think that the Code and the City allowed for utility kind of stuff like that.

Mr. Begleiter: Are you kidding? The City fosters creation of ugly utilities. We grow them for a living in this city.

Mr. Osborne: You are speaking of electric poles, aren't you.

Mr. Begleiter: I am speaking of utilities.

MOTION BY BEGLEITER, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION RECOMMEND THAT:

- A. CITY COUNCIL APPROVE THE REZONING OF THE 2.11 ACRE PROPERTIES AT 281-295 NEW LONDON ROAD FROM RM (MULTI-FAMILY – GARDEN APARTMENTS) AND RS (SINGLE-FAMILY, DETACHED) TO BLR (BUSINESS, LIMITED RESIDENTIAL) AS SHOWN ON THE PLANNING DEPARTMENT EXHIBIT A DATED NOVEMBER 5, 2008; AND THAT,
- B. CITY COUNCIL APPROVE THE CAMPUSSIDE/EMILY BELL PLACE MAJOR SUBDIVISION PLAN AS SHOWN ON THE HILLCREST ASSOCIATES, INC., PLAN DATED, AUGUST 21, 2008, WITH REVISIONS, WITH THE FURTHER RESTRICTION THAT THE DEVELOPER VOLUNTARILY AGREE TO DEED RESTRICT THE PROPERTY TO LIMIT THE TOTAL MAXIMUM NUMBER OF INDIVIDUALS RESIDING IN EACH OF THE UNITS TO ONE SINGLE FAMILY OR THE NUMBER OF UNRELATED PERSONS IN A UNIT TO ONE PERSON PER BEDROOM WITH A SIX UNRELATED OCCUPANT MAXIMUM.

VOTE: 5-1

AYE: BEGLEITER, BOWMAN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: BROWN

ABSENT: DRESSEL

MOTION PASSED

Ms. Feeney Roser: I just wanted to take a moment to address the Commission. This is my last Planning Commission meeting as your Interim Planning and Development Director, and I wanted to let you know what a pleasure it was for me to work with you. I have never met a group of more hardworking and dedicated citizens who volunteer

countless hours every month, and I certainly have enjoyed the association. I do appreciate your patience with me at times. I had pretty big shoes to fill here and we all know that Roy knows the Code like the back of his hand, and so there were some things I had to go back and look up for you. But, I really have enjoyed it and I appreciated the time that I got to spend with you. That's not to say I won't be back at a future meeting, but my official responsibilities as Interim Planning and Development Director end with this meeting. So, thank you very much.

Mr. Bowman: Thank you, Maureen. Tell Roy we didn't miss him all that much, but we will take him back. You can put that in the minutes. He'll get me.

Meeting adjourned at 9:45 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission